

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 593

Introduced by Assembly Member Ma

February 16, 2011

An act to amend Section ~~1109~~ of the Evidence 1473.5 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 593, as amended, Ma. Domestic violence: ~~evidence: battering:~~ *writ of habeas corpus.*

Existing law, operative until January 1, 2020, establishes circumstances under which a writ of habeas corpus may be prosecuted for certain violent felonies on the basis of expert testimony regarding intimate partner battering that was not received in evidence at trial and may be sufficient to undermine confidence in the conviction, as specified.

This bill would delete the repeal clause for those provisions and thus extend the operation of those provisions indefinitely.

~~Under existing law, evidence of a person's character or a trait of his or her character is generally inadmissible when offered to prove his or her conduct on a specified occasion. Existing law provides, however, that when a defendant is accused of domestic violence in a criminal action, evidence of the defendant's prior acts of domestic violence may be admissible under specified circumstances.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1473.5 of the Penal Code is amended to
2 read:

3 1473.5. (a) A writ of habeas corpus also may be prosecuted
4 on the basis that expert testimony relating to intimate partner
5 battering and its effects, within the meaning of Section 1107 of
6 the Evidence Code, was not received in evidence at the trial court
7 proceedings relating to the prisoner's incarceration, and is of such
8 substance that, had it been received in evidence, there is a
9 reasonable probability, sufficient to undermine confidence in the
10 judgment of conviction, that the result of the proceedings would
11 have been different. Sections 1260 to 1262, inclusive, apply to the
12 prosecution of a writ of habeas corpus pursuant to this section. As
13 used in this section, "trial court proceedings" means those court
14 proceedings that occur from the time the accusatory pleading is
15 filed until and including judgment and sentence.

16 (b) This section is limited to violent felonies as specified in
17 subdivision (c) of Section 667.5 that were committed before August
18 29, 1996, and that resulted in judgments of conviction after a plea
19 or trial as to which expert testimony admissible pursuant to Section
20 1107 of the Evidence Code may be probative on the issue of
21 culpability.

22 (c) If a petitioner for habeas corpus under this section has
23 previously filed a petition for writ of habeas corpus, it is grounds
24 for denial of the new petition if a court determined on the merits
25 in the prior petition that the omission of expert testimony relating
26 to battered women's syndrome or intimate partner battering and
27 its effects at trial was not prejudicial and did not entitle the
28 petitioner to the writ of habeas corpus.

29 (d) For purposes of this section, the changes that become
30 effective on January 1, 2005, are not intended to expand the uses
31 or applicability of expert testimony on battering and its effects that
32 were in effect immediately prior to that date in criminal cases.

33 ~~(e) This section shall remain in effect only until January 1, 2020,~~
34 ~~and as of that date is repealed, unless a later enacted statute, that~~
35 ~~is enacted before January 1, 2020, deletes or extends that date.~~

36 SECTION 1. ~~Section 1109 of the Evidence Code is amended~~
37 ~~to read:~~

1 ~~1109. (a) (1) Except as provided in subdivision (e) or (f), in~~
2 ~~a criminal action in which the defendant is accused of an offense~~
3 ~~involving domestic violence, evidence of the defendant's~~
4 ~~commission of other domestic violence is not made inadmissible~~
5 ~~by Section 1101 if the evidence is not inadmissible pursuant to~~
6 ~~Section 352.~~

7 ~~(2) Except as provided in subdivision (e) or (f), in a criminal~~
8 ~~action in which the defendant is accused of an offense involving~~
9 ~~abuse of an elder or dependent person, evidence of the defendant's~~
10 ~~commission of other abuse of an elder or dependent person is not~~
11 ~~made inadmissible by Section 1101 if the evidence is not~~
12 ~~inadmissible pursuant to Section 352.~~

13 ~~(3) Except as provided in subdivision (e) or (f) and subject to~~
14 ~~a hearing conducted pursuant to Section 352, which shall include~~
15 ~~consideration of any corroboration and remoteness in time, in a~~
16 ~~criminal action in which the defendant is accused of an offense~~
17 ~~involving child abuse, evidence of the defendant's commission of~~
18 ~~child abuse is not made inadmissible by Section 1101 if the~~
19 ~~evidence is not inadmissible pursuant to Section 352. Nothing in~~
20 ~~this paragraph prohibits or limits the admission of evidence~~
21 ~~pursuant to subdivision (b) of Section 1101.~~

22 ~~(b) In an action in which evidence is to be offered under this~~
23 ~~section, the people shall disclose the evidence to the defendant,~~
24 ~~including statements of witnesses or a summary of the substance~~
25 ~~of any testimony that is expected to be offered, in compliance with~~
26 ~~the provisions of Section 1054.7 of the Penal Code.~~

27 ~~(c) This section shall not be construed to limit or preclude the~~
28 ~~admission or consideration of evidence under any other statute or~~
29 ~~case law.~~

30 ~~(d) As used in this section:~~

31 ~~(1) "Abuse of an elder or dependent person" means physical or~~
32 ~~sexual abuse, neglect, financial abuse, abandonment, isolation,~~
33 ~~abduction, or other treatment that results in physical harm, pain,~~
34 ~~or mental suffering, the deprivation of care by a caregiver, or other~~
35 ~~deprivation by a custodian or provider of goods or services that~~
36 ~~are necessary to avoid physical harm or mental suffering.~~

37 ~~(2) "Child abuse" means an act proscribed by Section 273d of~~
38 ~~the Penal Code.~~

39 ~~(3) "Domestic violence" has the meaning set forth in Section~~
40 ~~13700 of the Penal Code. Subject to a hearing conducted pursuant~~

1 to Section 352, which shall include consideration of any
2 corroboration and remoteness in time, “domestic violence” has
3 the further meaning set forth in Section 6211 of the Family Code,
4 if the act occurred no more than five years before the charged
5 offense.

6 (e) Evidence of acts occurring more than 10 years before the
7 charged offense is inadmissible under this section, unless the court
8 determines that the admission of this evidence is in the interest of
9 justice.

10 (f) Evidence of the findings and determinations of administrative
11 agencies regulating the conduct of health facilities licensed under
12 Section 1250 of the Health and Safety Code is inadmissible under
13 this section.